

### § 15.3

### 25 CFR Ch. I (4–1–07 Edition)

*Secretary* means the Secretary of the Interior or his or her authorized representative.

*Testate means* the decedent executed a valid will before his or her death.

*Trust cash assets* means the funds held in an IIM account that had accumulated or were due and owing to the decedent as of the date of death.

*Trust land* means the land, or an interest therein, for which the United States holds fee title in trust for the benefit of an individual Indian.

*We or us* means either an official of BIA or a tribe performing probate functions under a BIA contract or compact.

*Will* means a written testamentary document that was signed by the decedent and attested to by two disinterested adult witnesses, and that states who will receive the decedent's trust or restricted property.

*You or I* means an interested party, as defined herein, with an interest in the decedent's trust estate unless a specific section says otherwise.

#### **§ 15.3 Will the Secretary probate all the property in Indian estates?**

(a) No. We will probate only the trust or restricted property in the estate of an Indian decedent.

(b) We will not probate:

(1) Real or personal property in an estate of an Indian decedent that is not trust or restricted property;

(2) Restricted property derived from allotments in the estates of members of the Five Civilized Tribes (Cherokee, Choctaw, Chickasaw, Creek and Seminole) in Oklahoma; and

(3) Restricted interests derived from allotments made to Osage Indians in Oklahoma (Osage Nation) and Osage headright interests.

(c) We will probate the estate of a deceased member of the Five Civilized Tribes or Osage Nation who owns an interest in land derived from an individual Indian other than the Five Civilized Tribes or Osage Nation.

#### **§ 15.4 How does the probate process work?**

The basic steps of the probate process are:

(a) We find out about a person's death (*see* subpart B of this part for details);

(b) We prepare a probate package that includes documents you send us (*see* subpart C of this part for details);

(c) We refer the completed probate package to OHA for assignment to a deciding official (*see* subpart D of this part for details); and

(d) The deciding official decides how to distribute the property and/or funds deposited in an IIM account and we make the distribution (*see* subpart D of this part for details).

### **Subpart B—Starting the Probate Process**

#### **§ 15.101 How do I begin the BIA probate process?**

As soon as possible you should contact the nearest BIA agency or regional office where the decedent was enrolled to inform us of the decedent's death.

(a) You should provide a certified copy of the death certificate, if one exists.

(b) If a death certificate does not exist, you should provide an affidavit of death prepared by the tribe with whom the decedent was associated or someone who knows about the decedent's death that specifies what is known about the date and cause of the decedent's death. A copy of any supporting documents that may be available, such as an obituary or death notice or a church or court record, should be provided along with the affidavit.

#### **§ 15.102 May I notify BIA of a death if I am not related to the decedent?**

Yes. You do not need to be related to the decedent in order to notify us of the death. You can be a friend, neighbor, or any other interested party.

#### **§ 15.103 When should BIA be notified of a death?**

There is no deadline for notifying us of a death. However, you should notify us of a death as soon as possible after the person dies.

#### **§ 15.104 What other documents does BIA need to prepare a probate package?**

(a) You should provide us with the following documents and information